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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL DOCKET FOR CASE
: NO. 2-18-CR-00100-PTB-1
-VS- :
MICHAEL ROHANA :

PHILADELPHIA, PA.
APRIL 8, 2019

BEFORE HONORABLE JUDGE PETRESE B. TUCKER

TRIAL - DAY 6

ORIGINAL
FILED
MAY - 8 2019
KATE BARRMAN, Clerk
Dep. Clerk

APPEARANCES:

FOR THE GOVERNMENT: U.S. ATTORNEY'S OFFICE
BY: K.T. NEWTON, AUSA
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PHILADELPHIA, PA 19106

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JC

1 APPEARANCES (CONT.)

2 FOR THE DEFENDANT: FEDERAL COMMUNITY DEFENDER
3 BY: CATHERINE C. HENRY, ESQUIRE
4 AND
5 NANCY MACEOIN, ESQUIRE
6 OFFICE - EDPA
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THE CURTIS CENTER
601 WALNUT STREET
PHILADELPHIA, PA 19106

7 ALSO PRESENT:

8 MICHAEL SCHWARTZ, ESQUIRE
9 REPRESENTING THE FRANKLIN INSTITUTE

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1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING.

3 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

4 THE COURT: YOU MAY BE SEATED.

5 ARE WE READY FOR THE JURY?

6 MS. NEWTON: WE ARE, YOUR HONOR.

7 THE COURT: OKAY.

8 (JURY IN.)

9 THE COURT: GOOD MORNING, LADIES AND
10 GENTLEMEN.

11 THE JURY: GOOD MORNING.

12 THE COURT: YOU MAY BE SEATED.

13 MEMBERS OF THE JURY, NOW THAT YOU HAVE
14 SEEN AND HEARD THE EVIDENCE AND THE ARGUMENTS OF THE
15 LAWYERS, I WILL NOW INSTRUCT YOU ON THE LAW.

16 YOU HAVE TWO DUTIES AS JURORS. YOUR
17 FIRST DUTY IS TO DECIDE THE FACTS FROM THE EVIDENCE THAT
18 YOU HAVE HEARD AND SEEN IN THE COURTROOM DURING THE
19 TRIAL. THIS IS YOUR JOB AND YOURS ALONE. I PLAY NO
20 PART IN FINDING THE FACTS. YOU SHOULD NOT TAKE ANYTHING
21 I MAY HAVE SAID OR DONE DURING THE TRIAL AS INDICATING
22 WHAT I THINK OF THE EVIDENCE OR WHAT I THINK ABOUT WHAT
23 YOUR VERDICT SHOULD BE.

24 YOUR SECOND DUTY IS TO APPLY THE LAW THAT
25 I WILL GIVE YOU TO THE FACTS. MY ROLE NOW IS TO EXPLAIN

1 TO YOU THE LEGAL PRINCIPLES THAT MUST GUIDE YOU IN YOUR
2 DECISIONS. YOU MUST APPLY MY INSTRUCTIONS CAREFULLY.
3 EACH OF THE INSTRUCTIONS IS IMPORTANT, AND YOU MUST
4 APPLY ALL OF THEM. YOU MUST NOT SUBSTITUTE OR FOLLOW
5 YOUR OWN NOTION OR OPINION ABOUT WHAT THE LAW IS OR
6 OUGHT TO BE. YOU MUST APPLY THE LAW THAT I GIVE TO YOU
7 WHETHER YOU AGREE WITH IT OR NOT.

8 WHATEVER YOUR VERDICT, IT WILL HAVE TO BE
9 UNANIMOUS. ALL OF YOU WILL HAVE TO AGREE OR THERE WILL
10 BE NO VERDICT. IN THE JURY ROOM YOU WILL DISCUSS THE
11 CASE AMONG YOURSELVES, BUT ULTIMATELY EACH OF YOU WILL
12 HAVE TO MAKE UP HIS OR HER OWN MIND. THIS IS A
13 RESPONSIBILITY THAT EACH OF YOU HAS AND THAT YOU CANNOT
14 AVOID.

15 DURING YOUR DELIBERATIONS, YOU MUST NOT
16 COMMUNICATE WITH OR PROVIDE ANY INFORMATION TO ANYONE BY
17 ANY MEANS ABOUT THIS CASE. YOU MAY NOT USE ANY
18 ELECTRONIC DEVICE OR MEDIA, SUCH AS THE TELEPHONE, A
19 CELL PHONE, SMART PHONE, IPHONE, BLACKBERRY OR COMPUTER,
20 THE INTERNET AND INTERNET SERVICE, ANY TEXT OR INSTANT
21 MESSAGING SERVICE, ANY INTERNET CHAT ROOM, BLOG OR
22 WEBSITE, SUCH AS FACEBOOK, MYSPACE, LINKEDIN, YOUTUBE OR
23 TWITTER, TO COMMUNICATE TO ANYONE ABOUT THIS CASE OR
24 CONDUCT ANY RESEARCH ABOUT THIS CASE UNTIL I ACCEPT YOUR
25 VERDICT. IN OTHER WORDS, YOU CANNOT TALK TO ANYONE ON

1 THE PHONE, CORRESPOND WITH ANYONE OR ELECTRONICALLY
2 COMMUNICATE WITH ANYONE ABOUT THIS CASE. YOU CAN ONLY
3 DISCUSS THIS CASE IN THE JURY ROOM WITH YOUR FELLOW
4 JURORS DURING THE DELIBERATIONS. YOU MAY NOT USE
5 ELECTRONIC MEANS TO INVESTIGATE OR TO COMMUNICATE ABOUT
6 THIS CASE BECAUSE IT IS IMPORTANT THAT YOU DECIDE THIS
7 CASE BASED SOLELY ON THE EVIDENCE PRESENTED IN THE
8 COURTROOM.

9 YOU ARE ONLY PERMITTED TO DISCUSS THIS
10 CASE WITH YOUR FELLOW JURORS DURING DELIBERATIONS
11 BECAUSE THEY HAVE SEEN AND HEARD THE SAME EVIDENCE YOU
12 HAVE.

13 IN OUR JUDICIAL SYSTEM IT IS IMPORTANT
14 THAT YOU NOT BE INFLUENCED BY ANYTHING OR ANYONE OUTSIDE
15 OF THIS COURTROOM. PERFORM THESE DUTIES FAIRLY AND
16 IMPARTIALLY. DO NOT ALLOW SYMPATHY, PREJUDICE, FEAR OR
17 PUBLIC OPINION TO INFLUENCE YOU. YOU SHOULD ALSO NOT BE
18 INFLUENCED BY ANY PERSON'S RACE, COLOR, RELIGION,
19 NATIONAL ANCESTRY OR GENDER.

20 YOU MUST MAKE YOUR DECISION IN THIS CASE
21 BASED ONLY ON THE EVIDENCE THAT YOU HAVE HEARD AND SEEN
22 IN THE COURTROOM. DO NOT LET RUMORS, SUSPICIONS OR
23 ANYTHING ELSE THAT YOU MAY HAVE SEEN OR HEARD OUTSIDE OF
24 THE COURT INFLUENCE YOUR DECISION IN ANY WAY. THE
25 EVIDENCE FROM WHICH YOU WILL FIND THE FACTS CONSISTS OF

1 THE FOLLOWING: THE TESTIMONY OF THE WITNESSES; THE
2 DOCUMENTS AND OTHER THINGS AS EXHIBITS; AND ANY FACT OR
3 TESTIMONY THAT WAS STIPULATED TO, THAT IS, FORMALLY
4 AGREED TO BY THE PARTIES.

5 THE FOLLOWING IS NOT EVIDENCE: THE
6 INDICTMENT; STATEMENTS AND ARGUMENTS OF THE LAWYERS FOR
7 THE PARTIES IN THE CASE; QUESTIONS BY THE LAWYERS; AND
8 QUESTIONS THAT I MAY HAVE ASKED; OBJECTIONS BY LAWYERS
9 INCLUDING OBJECTIONS IN WHICH THE LAWYERS STATED FACTS;
10 ANY TESTIMONY I STRUCK OR TOLD YOU TO DISREGARD; AND
11 ANYTHING YOU MAY HAVE SEEN OR HEARD ABOUT THIS CASE
12 OUTSIDE THE COURTROOM.

13 YOU SHOULD USE YOUR COMMON SENSE IN
14 WEIGHING THE EVIDENCE. CONSIDER IT IN LIGHT OF EVERYDAY
15 EXPERIENCE WITH PEOPLE AND EVENTS AND GIVE IT WHATEVER
16 WEIGHT YOU THINK IT DESERVES. IF YOUR EXPERIENCE AND
17 COMMON SENSE TELLS YOU THAT CERTAIN EVIDENCE REASONABLY
18 LEADS TO A CONCLUSION, YOU MAY REACH THAT CONCLUSION.

19 AS I HAVE TOLD YOU IN MY PRELIMINARY
20 INSTRUCTIONS, THE RULES OF EVIDENCE CONTROL WHAT CAN BE
21 RECEIVED INTO EVIDENCE. DURING THE TRIAL THE LAWYERS
22 OBJECTED WHEN THEY THOUGHT THAT THE EVIDENCE THAT WAS
23 OFFERED WAS NOT PERMITTED BY THE RULES OF EVIDENCE.
24 THESE OBJECTIONS SIMPLY MEAN THAT THE LAWYERS ARE ASKING
25 ME TO DECIDE WHETHER THE EVIDENCE SHOULD BE ALLOWED

1 UNDER THE RULES. YOU SHOULD NOT BE INFLUENCED BY THE
2 FACT THAT AN OBJECTION WAS MADE. YOU SHOULD ALSO NOT BE
3 INFLUENCED BY MY RULINGS ON THE OBJECTIONS OR ANY
4 SIDEBAR CONFERENCES YOU MAY HAVE OVERHEARD.

5 WHEN I OVERRULED AN OBJECTION, THE
6 QUESTION WAS ANSWERED OR THE EXHIBIT WAS RECEIVED AS
7 EVIDENCE, AND YOU SHOULD TREAT THE TESTIMONY AND/OR
8 EXHIBIT LIKE ANY OTHER. WHEN I ALLOWED THE TESTIMONY
9 FOR LIMITED PURPOSES ONLY, I INSTRUCTED YOU TO CONSIDER
10 THE EVIDENCE ONLY FOR THE LIMITED PURPOSE AND YOU MUST
11 DO THAT.

12 WHEN I SUSTAINED AN OBJECTION, THE
13 QUESTION WAS NOT ANSWERED OR THE EXHIBIT WAS NOT
14 RECEIVED AS EVIDENCE. YOU MUST DISREGARD THE QUESTION
15 OR THE EXHIBIT ENTIRELY. DO NOT THINK ABOUT OR GUESS
16 WHAT THE WITNESS MAY HAVE SAID IN THE ANSWER. DO NOT
17 THINK ABOUT OR GUESS WHAT THE EXHIBIT MIGHT HAVE SHOWN.
18 SOMETIMES A WITNESS MAY HAVE ALREADY ANSWERED BEFORE A
19 LAWYER OBJECTED OR BEFORE I RULED ON THE OBJECTION. IF
20 THAT HAPPENS AND IF I HAVE SUSTAINED THE OBJECTION, YOU
21 MUST DISREGARD THE ANSWER THAT WAS GIVEN.

22 ALSO, IF I ORDERED SOME TESTIMONY OR
23 OTHER EVIDENCE BE STRICKEN OR REMOVED FROM THE RECORD,
24 YOU MUST DISREGARD THAT EVIDENCE. WHEN YOU ARE DECIDING
25 THIS CASE, YOU MUST NOT CONSIDER OR BE INFLUENCED IN ANY

1 WAY BY THE TESTIMONY OR OTHER EVIDENCE THAT I HAVE TOLD
2 YOU TO DISREGARD.

3 ALTHOUGH THE LAWYERS MAY HAVE CALLED YOUR
4 ATTENTION TO CERTAIN FACTS OR FACTUAL CONCLUSIONS THAT
5 THEY THOUGHT WERE IMPORTANT, WHAT THE LAWYER SAID IS NOT
6 EVIDENCE, NOT BINDING ON YOU. IT IS YOUR OWN
7 RECOLLECTION AND THE INTERPRETATION OF THE EVIDENCE THAT
8 CONTROLS YOUR DECISION IN THIS CASE.

9 ALSO, DO NOT ASSUME FROM ANYTHING THAT I
10 MAY HAVE SAID OR DONE DURING THE TRIAL THAT I HAVE ANY
11 OPINION ABOUT THE ISSUES IN THIS CASE OR ABOUT WHAT YOUR
12 VERDICT SHOULD BE.

13 NOW, THERE ARE TWO TYPES OF EVIDENCE THAT
14 MAY BE USED IN THIS TRIAL, DIRECT EVIDENCE AND
15 CIRCUMSTANTIAL OR INDIRECT EVIDENCE. YOU MAY USE BOTH
16 TYPES OF EVIDENCE IN REACHING YOUR VERDICT.

17 DIRECT EVIDENCE IS SIMPLY EVIDENCE WHICH,
18 IF BELIEVED, DIRECTLY PROVES A FACT. AN EXAMPLE OF
19 DIRECT EVIDENCE OCCURS WHEN A WITNESS TESTIFIES ABOUT
20 SOMETHING THE WITNESS KNOWS FROM HIS OR HER OWN SENSES,
21 SOMETHING THE WITNESS MAY HAVE SEEN, TOUCHED, HEARD OR
22 SMELLED.

23 CIRCUMSTANTIAL EVIDENCE IS EVIDENCE
24 WHICH, IF BELIEVED, INDIRECTLY PROVES A FACT. IT IS
25 EVIDENCE THAT PROVES ONE OR MORE FACTS FROM WHICH YOU

1 MAY REASONABLY FIND OR INFER THE EXISTENCE OF SOME OTHER
2 FACT OR FACTS. A REASONABLE INFERENCE IS SIMPLY A
3 DEDUCTION OR A CONCLUSION THAT REASON, EXPERIENCE AND
4 COMMON SENSE LEAD YOU TO MAKE FROM THE EVIDENCE.

5 A REASONABLE INFERENCE IS NOT A SUSPICION
6 OR A GUESS. IT IS A REASONED LOGICAL DECISION TO FIND
7 THAT A DISPUTED FACT EXISTS ON THE BASIS OF ANOTHER
8 FACT. FOR EXAMPLE, IF SOMEONE WALKED INTO THIS
9 COURTROOM WEARING A WET RAINCOAT AND CARRYING A WET
10 UMBRELLA, THAT WOULD BE CIRCUMSTANTIAL OR INDIRECT
11 EVIDENCE FROM WHICH YOU COULD REASONABLY FIND OR
12 CONCLUDE THAT IT WAS RAINING. YOU WOULD NOT HAVE TO
13 FIND THAT IT WAS RAINING, BUT YOU COULD.

14 SOMETIMES DIFFERENT INFERENCES MAY BE
15 DRAWN FROM THE SAME SET OF FACTS. THE GOVERNMENT MAY
16 ASK YOU TO DRAW ONE INFERENCE, AND THE DEFENSE MAY ASK
17 YOU TO DRAW ANOTHER. YOU AND YOU ALONE MUST DECIDE WHAT
18 REASONABLE INFERENCES YOU WILL DRAW BASED ON THE
19 EVIDENCE AND YOUR REASON, EXPERIENCE AND COMMON SENSE.

20 YOU SHOULD CONSIDER ALL THE EVIDENCE THAT
21 IS PRESENTED IN THIS TRIAL, DIRECT AND CIRCUMSTANTIAL.
22 THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT THAT
23 SHOULD BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL
24 EVIDENCE. IT IS UP TO YOU TO DECIDE HOW MUCH WEIGHT TO
25 GIVE ANY EVIDENCE.

1 YOU HAVE HEARD REPUTATION AND OPINION
2 EVIDENCE ABOUT WHETHER THE DEFENDANT HAS A CHARACTER
3 TRAIT FOR HONESTY. YOU SHOULD CONSIDER THIS CHARACTER
4 EVIDENCE TOGETHER WITH AND IN THE SAME WAY AS ALL OTHER
5 EVIDENCE IN THE CASE IN DECIDING WHETHER THE GOVERNMENT
6 HAS PROVED THE CHARGES BEYOND A REASONABLE DOUBT.

7 AS I STATED IN MY PRELIMINARY
8 INSTRUCTIONS AT THE BEGINNING OF THE TRIAL, IN DECIDING
9 WHAT THE FACTS ARE, YOU MUST DECIDE WHICH TESTIMONY YOU
10 BELIEVE AND WHICH TESTIMONY YOU DO NOT BELIEVE. YOU ARE
11 THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES.

12 CREDIBILITY REFERS TO WHETHER A WITNESS
13 IS WORTHY OF BELIEF. WAS THE WITNESS TRUTHFUL? WAS THE
14 WITNESS'S TESTIMONY ACCURATE? YOU MAY BELIEVE
15 EVERYTHING A WITNESS SAID OR ONLY PART OF IT OR NONE OF
16 IT. YOU MAY DECIDE WHETHER YOU BELIEVE A WITNESS BASED
17 ON HIS OR HER BEHAVIOR AND MANNER OF TESTIFYING, THE
18 EXPLANATIONS THE WITNESS GAVE, AND ALL OTHER EVIDENCE IN
19 THE CASE JUST AS YOU WOULD ANY IMPORTANT MATTER WHEN YOU
20 ARE TRYING TO DECIDE IF A PERSON IS TRUTHFUL,
21 STRAIGHTFORWARD AND ACCURATE IN HIS OR HER RECOLLECTION.

22 IN DECIDING THE QUESTION OF CREDIBILITY,
23 REMEMBER TO USE YOUR COMMON SENSE, YOUR GOOD JUDGMENT
24 AND YOUR EXPERIENCE. IN DECIDING WHAT TO BELIEVE YOU
25 MAY CONSIDER A NUMBER OF FACTORS:

1 1. THE OPPORTUNITY AND THE ABILITY OF
2 THE WITNESS TO SEE, HEAR AND KNOW THE THINGS ABOUT WHICH
3 THE WITNESS TESTIFIED;

4 THE QUALITY OF THE WITNESS'S KNOWLEDGE,
5 UNDERSTANDING AND MEMORY;

6 THE WITNESS' APPEARANCE, BEHAVIOR AND
7 MANNER WHILE TESTIFYING;

8 WHETHER THE WITNESS HAS AN INTEREST IN
9 THE OUTCOME OF THE CASE OR ANY MOTIVE, BIAS, OR
10 PREJUDICE;

11 ANY RELATION THE WITNESS MAY HAVE WITH A
12 PARTY IN THE CASE AND ANY EFFECT THE VERDICT MAY HAVE ON
13 THE WITNESS;

14 WHETHER THE WITNESS SAID OR WROTE
15 ANYTHING BEFORE TRIAL THAT WAS DIFFERENT FROM THE
16 WITNESS'S TESTIMONY IN COURT;

17 WHETHER THE WITNESS' TESTIMONY WAS
18 CONSISTENT OR INCONSISTENT WITH OTHER EVIDENCE THAT YOU
19 BELIEVE;

20 AND ANY OTHER FACTORS THAT BEAR ON THE
21 WITNESS' -- ON WHETHER THE WITNESS SHOULD BE BELIEVED.

22 INCONSISTENCIES OR DISCREPANCIES IN THE
23 WITNESS' TESTIMONY OR BETWEEN THE TESTIMONY OF DIFFERENT
24 WITNESSES MAY OR MAY NOT CAUSE YOU TO DISBELIEVE A
25 WITNESS' TESTIMONY. TWO OR MORE PERSONS WITNESSING THE

1 SAME INCIDENT MAY SIMPLY SEE IT AND HEAR IT DIFFERENTLY.
2 MISTAKEN RECOLLECTION LIKE FAILURE TO RECALL IS A COMMON
3 HUMAN EXPERIENCE. IN WEIGHING THE EFFECT OF AN
4 INCONSISTENCY, YOU SHOULD CONSIDER WHETHER IT WAS ABOUT
5 A MATTER OF IMPORTANCE OR AN INSIGNIFICANT DETAIL. YOU
6 SHOULD ALSO CONSIDER WHETHER THE INCONSISTENCY WAS
7 INNOCENT OR INTENTIONAL.

8 YOU ARE NOT REQUIRED TO ACCEPT TESTIMONY
9 EVEN IF THE TESTIMONY WAS NOT CONTRADICTED AND THE
10 WITNESS WAS NOT IMPEACHED. YOU MAY DECIDE THAT THE
11 WITNESS IS NOT WORTHY OF BELIEF BECAUSE OF THE WITNESS'
12 BEARING AND DEMEANOR, OR BECAUSE OF THE INHERENT
13 IMPROBABILITY OF THE TESTIMONY, OR FOR OTHER REASONS
14 THAT ARE SUFFICIENT TO YOU.

15 AFTER YOU MAKE UP YOUR OWN MIND OR YOU
16 MAKE YOUR OWN JUDGMENT ABOUT THE BELIEVABILITY OF A
17 WITNESS, YOU CAN THEN ATTACH TO THE WITNESS' TESTIMONY
18 THE IMPORTANCE OR WEIGHT YOU THINK IT DESERVES.

19 THE WEIGHT OF THE EVIDENCE IS PROOF -- TO
20 PROVE A FACT DOES NOT NECESSARILY DEPEND ON THE NUMBER
21 OF WITNESSES WHO TESTIFY OR THE QUANTITY OF EVIDENCE
22 THAT WAS PRESENTED. WHAT IS MORE IMPORTANT THAN NUMBERS
23 OR QUANTITY IS HOW BELIEVABLE THE WITNESS WAS AND HOW
24 MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

25 YOU HAVE HEARD THE TESTIMONY OF LAW

1 ENFORCEMENT OFFICERS. THE FACT THAT A WITNESS IS
2 EMPLOYED AS A LAW ENFORCEMENT OFFICER DOES NOT MEAN THAT
3 HIS OR HER TESTIMONY NECESSARILY DESERVES MORE OR LESS
4 CONSIDERATION OR GREATER OR LESSER WEIGHT THAN THAT OF
5 ANY OTHER WITNESS. YOU MUST DECIDE AFTER REVIEWING ALL
6 THE EVIDENCE WHETHER YOU BELIEVE THE TESTIMONY OF THE
7 LAW ENFORCEMENT WITNESSES AND HOW MUCH WEIGHT, IF ANY,
8 IT DESERVES.

9 THE RULES OF EVIDENCE ORDINARILY DO NOT
10 PERMIT A WITNESS TO STATE THEIR OWN OPINIONS ABOUT
11 IMPORTANT QUESTIONS IN A TRIAL, BUT THERE ARE EXCEPTIONS
12 TO THESE RULES. IN THIS CASE, YOU HEARD THE TESTIMONY
13 FROM THE FOLLOWING EXPERTS: MICHAEL COHN, A CERTIFIED
14 APPRAISER IN ASIAN ART; MARLEY RABSTEJNEK, AN EXPERT IN
15 APPRAISALS OF CHINESE ART; LARK MASON, AN EXPERT IN
16 CHINESE ART AND APPRAISALS OF CHINESE ART. BECAUSE OF
17 THEIR KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR
18 EDUCATION IN THE FIELD OF ASIAN ART RESPECTIVELY, THEY
19 WERE PERMITTED TO OFFER OPINIONS IN THE FIELD OF
20 EXPERTISE AND THE REASONS FOR THOSE OPINIONS.

21 YOU HAVE ALSO HEARD TESTIMONY FROM VICTOR
22 WIENER, A CERTIFIED APPRAISER AND CERTIFIED USPAP
23 INSTRUCTOR, AND CYNTHIA HERBERT, AN EXPERT ON THE
24 METHODOLOGY AND APPLICATION OF THE METHODOLOGY OF
25 DRAFTING APPRAISALS. BECAUSE OF THEIR KNOWLEDGE, SKILL

1 AND EXPERIENCE AND TRAINING, THEY WERE PERMITTED TO
2 OFFER OPINIONS IN THE FIELD OR EXPERTISE AND THE REASONS
3 FOR THEIR OPINIONS.

4 THE OPINIONS THESE WITNESSES STATE SHOULD
5 RECEIVE WHATEVER WEIGHT YOU THINK APPROPRIATE, GIVEN ALL
6 THE EVIDENCE IN THE CASE. IN WEIGHING THEIR OPINION
7 TESTIMONY, YOU MAY CONSIDER THE WITNESS' QUALIFICATIONS,
8 THE REASONS FOR THE WITNESS' OPINIONS, AND THE
9 RELIABILITY OF THE INFORMATION SUPPORTING THE WITNESS'
10 OPINIONS AS WELL AS ANY OTHER FACTORS DISCUSSED IN THESE
11 INSTRUCTIONS FOR WEIGHING THE TESTIMONY OF A WITNESS.

12 YOU MAY DISREGARD THE OPINIONS ENTIRELY
13 IF YOU DECIDE THAT THE OPINIONS ARE NOT BASED ON
14 SUFFICIENT KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR
15 EDUCATION. YOU MAY ALSO DISREGARD THE OPINIONS IF YOU
16 CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE
17 OPINIONS ARE NOT SOUND, OR IF YOU CONCLUDE THAT THE
18 OPINIONS ARE NOT SUPPORTED BY THE FACTS SHOWN BY THE
19 EVIDENCE, OR IF YOU THINK THE OPINIONS ARE OUTWEIGHED BY
20 OTHER EVIDENCE.

21 IN A CRIMINAL CASE, A DEFENDANT HAS A
22 CONSTITUTIONAL RIGHT NOT TO TESTIFY. HOWEVER, IF HE
23 CHOOSES TO TESTIFY, HE IS OF COURSE PERMITTED TO TAKE
24 THE WITNESS STAND ON HIS OWN BEHALF. IN THIS CASE, THE
25 DEFENDANT TESTIFIED. YOU SHOULD EXAMINE AND EVALUATE

1 HIS TESTIMONY JUST AS YOU WOULD THE TESTIMONY OF ANY
2 WITNESS.

3 YOU HAVE HEARD EVIDENCE THAT THE
4 DEFENDANT MICHAEL ROHANA WAS DRINKING AT THE TIME OF THE
5 OFFENSE OF THEFT CHARGED IN COUNT ONE OF THE INDICTMENT.
6 INTOXICATION IS NOT ITSELF A LEGAL DEFENSE TO A CRIMINAL
7 CHARGE. HOWEVER, INTOXICATION MAY SHOW THAT MICHAEL
8 ROHANA DID NOT HAVE THE INTENT NECESSARY TO COMMIT THE
9 OFFENSE THAT THE GOVERNMENT MUST PROVE IN ORDER TO FIND
10 MICHAEL ROHANA GUILTY.

11 IF YOU FIND BASED ON THE EVIDENCE
12 PRESENTED THAT THE DEFENDANT WAS INTOXICATED AT THE TIME
13 OF THE OFFENSE, YOU MAY FIND THAT HE DID NOT HAVE THE
14 INTENT REQUIRED FOR COUNT ONE, AS I WILL DESCRIBE TO
15 YOU. ON THE OTHER HAND, EVEN IF YOU BELIEVE THAT
16 MICHAEL ROHANA WAS INTOXICATED TO SOME DEGREE, YOU MAY
17 STILL FIND THAT HE WAS CAPABLE OF AND DID HAVE THE
18 REQUIRED INTENT.

19 AS I HAVE EXPLAINED TO YOU, AFTER
20 CONSIDERING ALL THE EVIDENCE, YOU FIND THAT THE
21 GOVERNMENT PROVED EACH ELEMENT OF THE OFFENSE CHARGED IN
22 COUNT ONE, INCLUDING THE INTENT ELEMENT, BEYOND A
23 REASONABLE DOUBT, THEN YOU SHOULD FIND THE DEFENDANT
24 GUILTY. BUT IF YOU FIND THE GOVERNMENT HAS FAILED TO
25 PROVE EACH ELEMENT BEYOND A REASONABLE DOUBT, THEN YOU

1 MUST FIND THE DEFENDANT NOT GUILTY OF COUNT ONE.

2 SUMMARY CHARTS HAVE BEEN PREPARED BY THE
3 GOVERNMENT. THESE SUMMARY CHARTS HAVE BEEN ADMITTED
4 INTO EVIDENCE AND HAVE BEEN SHOWN TO YOU DURING THE
5 TRIAL FOR THE PURPOSE OF EXPLAINING FACTS THAT ARE
6 ALLEGEDLY CONTAINED IN RECORDS AND OTHER DOCUMENTS WHICH
7 ARE IN EVIDENCE. YOU MAY CONSIDER THESE SUMMARIES AS
8 YOU WOULD ANY OTHER EVIDENCE ADMITTED DURING THE TRIAL
9 AND GIVE THEM SUCH WEIGHT OR IMPORTANCE, IF ANY, AS YOU
10 FEEL THEY DESERVE.

11 ALTHOUGH THE GOVERNMENT IS REQUIRED TO
12 PROVE A DEFENDANT GUILTY BEYOND A REASONABLE DOUBT, THE
13 GOVERNMENT IS NOT REQUIRED TO PRESENT ALL POSSIBLE
14 EVIDENCE RELATED TO THE CASE OR TO PRODUCE ALL POSSIBLE
15 WITNESSES WHO MIGHT HAVE SOME KNOWLEDGE ABOUT THE FACTS
16 OF THE CASE.

17 IN ADDITION, AS I HAVE EXPLAINED, THE
18 DEFENDANT IS NOT REQUIRED TO PRESENT ANY EVIDENCE OR TO
19 PRODUCE ANY WITNESSES.

20 THE DEFENDANT PLED NOT GUILTY TO THE
21 OFFENSES CHARGED. THE DEFENDANT IS PRESUMED TO BE
22 INNOCENT. HE STARTS TRIAL WITH A CLEAN SLATE, WITH NO
23 EVIDENCE AGAINST HIM. THE PRESUMPTION OF INNOCENCE
24 STAYS WITH THE DEFENDANT UNLESS AND UNTIL THE GOVERNMENT
25 HAS PRESENTED EVIDENCE THAT OVERCOMES THE PRESUMPTION BY

1 CONVINCING YOU THAT THE DEFENDANT IS GUILTY OF THE
2 OFFENSES CHARGED BEYOND A REASONABLE DOUBT.

3 THE PRESUMPTION OF INNOCENCE REQUIRES
4 THAT YOU FIND THE DEFENDANT NOT GUILTY UNLESS YOU ARE
5 SATISFIED THAT THE GOVERNMENT HAS PROVED GUILT BEYOND A
6 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE MEANS
7 THAT THE DEFENDANT HAS NO BURDEN OR OBLIGATION TO
8 PRESENT ANY EVIDENCE AT ALL OR TO PROVE THAT HE IS NOT
9 GUILTY. THE BURDEN OR OBLIGATION OF PROOF IS ON THE
10 GOVERNMENT TO PROVE THAT THE DEFENDANT IS GUILTY, AND
11 THIS BURDEN STAYS WITH THE GOVERNMENT THROUGHOUT THE
12 TRIAL.

13 IN ORDER FOR YOU TO FIND THE DEFENDANT
14 GUILTY OF THE OFFENSES CHARGED, THE GOVERNMENT MUST
15 CONVINCE YOU THAT THE DEFENDANT IS GUILTY BEYOND A
16 REASONABLE DOUBT. THAT MEANS THAT THE GOVERNMENT MUST
17 PROVE EACH AND EVERY ELEMENT OF THE OFFENSES CHARGED
18 BEYOND A REASONABLE DOUBT.

19 THE DEFENDANT MAY NOT BE CONVICTED BASED
20 ON SUSPICION OR CONJECTURE, BUT ONLY ON EVIDENCE PROVING
21 GUILT BEYOND A REASONABLE DOUBT.

22 PROOF BEYOND A REASONABLE DOUBT DOES NOT
23 MEAN PROOF BEYOND ALL POSSIBLE DOUBT OR TO A
24 MATHEMATICAL CERTAINTY. POSSIBLE DOUBTS, OR DOUBTS
25 BASED ON CONJECTURE, SPECULATION OR HUNCH, ARE NOT

1 REASONABLE DOUBTS.

2 A REASONABLE DOUBT IS A FAIR DOUBT BASED
3 ON REASON, LOGIC, COMMON SENSE OR EXPERIENCE. IT IS A
4 DOUBT THAT AN ORDINARY REASONABLE PERSON HAS AFTER
5 CAREFULLY WEIGHING ALL THE EVIDENCE, AND IT IS A DOUBT
6 OF THE SORT THAT WOULD CAUSE HIM OR HER TO HESITATE TO
7 ACT IN MATTERS OF IMPORTANCE IN HIS OR HER OWN LIFE. IT
8 MAY ARISE FROM THE EVIDENCE. OR FROM THE LACK OF
9 EVIDENCE, OR FROM THE NATURE OF THE EVIDENCE.

10 IF AFTER HEARING ALL THE EVIDENCE, YOU
11 ARE CONVINCED THAT THE GOVERNMENT HAS PROVED EACH AND
12 EVERY ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE
13 DOUBT, THEN YOU SHOULD RETURN A VERDICT OF GUILTY FOR
14 THAT OFFENSE. HOWEVER, IF YOU HAVE A REASONABLE DOUBT
15 ABOUT ONE OR MORE OF THE ELEMENTS OF THE OFFENSE
16 CHARGED, THEN YOU MUST RETURN A VERDICT OF NOT GUILTY OF
17 THAT OFFENSE.

18 YOU WILL NOTE THAT THE INDICTMENT CHARGES
19 THE OFFENSES WERE COMMITTED ON OR ABOUT A CERTAIN DATE.
20 THE GOVERNMENT DOES NOT HAVE TO PROVE WITH CERTAINTY THE
21 EXACT DATE OF THE ALLEGED OFFENSES. IT IS SUFFICIENT IF
22 THE GOVERNMENT PROVES BEYOND A REASONABLE DOUBT THAT THE
23 OFFENSES WERE COMMITTED ON A DATE REASONABLY NEAR THE
24 DATE ALLEGED.

25 THE DEFENDANT HERE IS CHARGED WITH MORE

1 THAN ONE OFFENSE. EACH OFFENSE IS CHARGED IN A SEPARATE
2 COUNT OF THE INDICTMENT. THE NUMBER OF OFFENSES CHARGED
3 IS NOT EVIDENCE OF GUILT, AND THIS SHOULD NOT INFLUENCE
4 YOUR DECISION IN ANY WAY.

5 YOU MUST SEPARATELY CONSIDER THE EVIDENCE
6 THAT RELATES TO EACH OFFENSE, AND YOU MUST RETURN A
7 SEPARATE VERDICT FOR EACH OFFENSE. FOR EACH OFFENSE
8 CHARGED, YOU MUST DECIDE WHETHER THE GOVERNMENT HAS
9 PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS
10 GUILTY OF THAT PARTICULAR OFFENSE. YOUR DECISION ON ONE
11 OFFENSE, WHETHER GUILTY OR NOT GUILTY, SHOULD NOT
12 INFLUENCE YOUR DECISION ON ANY OF THE OTHER OFFENSES
13 CHARGED. EACH OFFENSE SHOULD BE CONSIDERED SEPARATELY.

14 AS YOU KNOW, THE DEFENDANT IS CHARGED IN
15 THE INDICTMENT WITH VIOLATING FEDERAL LAW, SPECIFICALLY
16 TITLE 18, UNITED STATES CODE SECTION 668(B)(1), THEFT OF
17 AN OBJECT OF CULTURAL HERITAGE FROM A MUSEUM; AND
18 SECTION 668(B)(2), CONCEALMENT OF AN OBJECT OF CULTURAL
19 HERITAGE STOLEN FROM A MUSEUM.

20 AS I EXPLAINED AT THE BEGINNING OF THE
21 TRIAL, AN INDICTMENT IS JUST A FORMAL WAY OF SPECIFYING
22 THE EXACT CRIMES THE DEFENDANT IS ACCUSED OF COMMITTING.
23 AN INDICTMENT IS SIMPLY A DESCRIPTION OF THE CHARGES
24 AGAINST THE DEFENDANT. IT IS AN ACCUSATION ONLY. AN
25 INDICTMENT IS NOT EVIDENCE OF ANYTHING, AND YOU SHOULD

1 NOT GIVE ANY WEIGHT TO THE FACT THAT THE DEFENDANT HAS
2 BEEN INDICTED IN MAKING YOUR DECISION IN THIS CASE.

3 COUNT ONE OF THE INDICTMENT CHARGES THE
4 DEFENDANT MICHAEL ROHANA WITH THEFT OF AN OBJECT OF
5 CULTURAL HERITAGE FROM A MUSEUM, WHICH IS A VIOLATION OF
6 FEDERAL LAW. IN ORDER TO FIND THE DEFENDANT GUILTY OF
7 THIS OFFENSE, YOU MUST FIND THAT THE GOVERNMENT PROVED
8 EACH OF THE FOLLOWING THREE ELEMENTS BEYOND A REASONABLE
9 DOUBT: FIRST, THAT THE DEFENDANT STOLE OR OBTAINED BY
10 FRAUD THE PROPERTY DESCRIBED IN THE INDICTMENT; SECOND,
11 THAT AT THE TIME OF THE THEFT THIS PROPERTY WAS IN THE
12 CARE, CUSTODY OR CONTROL OF THE MUSEUM; AND THIRD, THAT
13 THE PROPERTY WAS AN OBJECT OF CULTURAL HERITAGE.

14 IN ORDER TO ESTABLISH THAT THE FRANKLIN
15 INSTITUTE IN PARTICULAR IS A MUSEUM, YOU MUST ALSO FIND
16 THAT THE GOVERNMENT PROVED EACH OF THE FOLLOWING FIVE
17 ELEMENTS BEYOND A REASONABLE DOUBT OF THE FRANKLIN
18 INSTITUTE: FIRST, THAT IT IS AN ORGANIZED AND PERMANENT
19 INSTITUTION, THE ACTIVITIES OF WHICH AFFECT INTERSTATE
20 AND FOREIGN COMMERCE; IT IS SITUATED IN THE UNITED
21 STATES; THIRD, IT IS ESTABLISHED FOR ESSENTIALLY
22 EDUCATIONAL OR AESTHETIC PURPOSE; FOURTH, IT HAS A
23 PROFESSIONAL STAFF; AND FIFTH, IT OWNS, UTILIZES AND
24 CARES FOR TANGIBLE OBJECTS THAT ARE EXHIBITED TO THE
25 PUBLIC ON A REGULAR SCHEDULE.

1 IN ORDER TO ESTABLISH THAT THE PROPERTY
2 AT ISSUE, THE CAVALRYMAN'S THUMB, IS AN OBJECT OF
3 CULTURAL HERITAGE, YOU MUST ALSO FIND THAT THE
4 GOVERNMENT PROVED EACH OF THE FOLLOWING -- PROVE ONE OF
5 THE FOLLOWING BEYOND A REASONABLE DOUBT: ONE, THAT THE
6 CAVALRYMAN'S THUMB IS OVER 100 YEARS OLD AND IS WORTH
7 MORE THAN \$5,000, OR THAT THE CAVALRYMAN'S THUMB IS
8 WORTH MORE THAN \$100,000.

9 WORTH MEANS THE MEASURE OF VALUE
10 RECEIVED, DERIVED SATISFACTION OF A TANGIBLE OR
11 INTANGIBLE PRODUCT.

12 TO STEAL MEANS TO WRONGFULLY TAKE MONEY
13 OR PROPERTY BELONGING TO ANOTHER WITH THE INTENT TO
14 PERMANENTLY DEPRIVE THE OWNER OR CUSTODIAN OF ITS USE OR
15 BENEFIT.

16 THE GOVERNMENT MUST PROVE BEYOND A
17 REASONABLE DOUBT THAT THE PROPERTY STOLEN WAS IN THE
18 CARE, CUSTODY OR CONTROL OF THE FRANKLIN INSTITUTE.
19 ALTHOUGH THE WORDS CARE OR CUSTODY AND CONTROL HAVE
20 SLIGHTLY DIFFERENT MEANINGS, FOR PURPOSES OF THIS
21 ELEMENT THEY EXPRESS A SIMILAR IDEA, THAT IS, THAT THE
22 FRANKLIN INSTITUTE HAD CONTROL OVER AND RESPONSIBILITY
23 FOR THE PROPERTY, EVEN THOUGH IT WAS NOT THE ACTUAL
24 OWNER OF THE PROPERTY AT THE TIME OF MICHAEL ROHANA'S
25 ACTIONS.

1 COUNT TWO OF THE INDICTMENT CHARGES THE
2 DEFENDANT, MICHAEL ROHANA, WITH CONCEALMENT OF AN OBJECT
3 OF CULTURAL HERITAGE STOLEN FROM A MUSEUM, WHICH IS A
4 VIOLATION OF FEDERAL LAW. IN ORDER TO FIND THE
5 DEFENDANT GUILTY OF THIS OFFENSE, YOU MUST FIND THAT THE
6 GOVERNMENT HAS PROVED EACH OF THE FOLLOWING THREE
7 ELEMENTS BEYOND A REASONABLE DOUBT: FIRST, THAT THE
8 OBJECT OF CULTURAL HERITAGE, WHICH WAS STOLEN, WAS IN
9 THE CARE, CUSTODY OR CONTROL OF A MUSEUM REGARDLESS OF
10 WHETHER OR NOT THE DEFENDANT KNEW IT WAS FROM A MUSEUM;
11 SECOND, THAT THE DEFENDANT KNEW THAT THE OBJECT OF
12 CULTURAL HERITAGE HAD BEEN STOLEN; AND THREE, THAT THE
13 DEFENDANT CONCEALED THE STOLEN OBJECT OF CULTURAL
14 HERITAGE.

15 MOTIVE IS NOT AN ELEMENT OF THE OFFENSE
16 WITH WHICH THE DEFENDANT IS CHARGED. PROOF OF BAD
17 MOTIVE IS NOT REQUIRED TO CONVICT. FURTHER, PROOF OF
18 BAD MOTIVE ALONE DOES NOT ESTABLISH THAT THE DEFENDANT
19 IS GUILTY AND PROOF OF GOOD MOTIVE ALONE DOES NOT
20 ESTABLISH THE DEFENDANT IS NOT GUILTY. EVIDENCE OF THE
21 DEFENDANT'S MOTIVE MAY, HOWEVER, HELP YOU FIND THE
22 DEFENDANT'S INTENT.

23 INTENT AND MOTIVES ARE DIFFERENT
24 CONCEPTS. MOTIVE IS WHAT PROMPTS A PERSON TO ACT.
25 INTENT REFERS ONLY TO THE STATE OF MIND IN WHICH THE

1 PARTICULAR ACT IS DONE. PERSONAL ADVANCEMENT AND
2 FINANCIAL GAIN, FOR EXAMPLE, ARE MOTIVES FOR MUCH OF
3 HUMAN CONDUCT. HOWEVER, THESE MOTIVES MAY PROMPT ONE
4 PERSON TO INTENTIONALLY DO SOMETHING PERFECTLY
5 ACCEPTABLE, WHILE PROMPTING ANOTHER PERSON TO
6 INTENTIONALLY DO AN ACT THAT IS A CRIME.

7 OFTEN THE STATE OF MIND, INTENT OR
8 KNOWLEDGE WITH WHICH A PERSON ACTS AT ANY GIVEN TIME
9 CANNOT BE PROVEN DIRECTLY BECAUSE ONE CANNOT READ
10 ANOTHER PERSON'S MIND AND TELL WHAT HE OR SHE IS
11 THINKING. HOWEVER, MICHAEL ROHANA'S STATE OF MIND CAN
12 BE PROVED INDIRECTLY FROM THE SURROUNDING CIRCUMSTANCES.
13 THUS, TO DETERMINE MICHAEL ROHANA'S STATE OF MIND, THAT
14 IS, WHAT MICHAEL ROHANA INTENDED OR KNEW AT A PARTICULAR
15 TIME, YOU MAY CONSIDER EVIDENCE ABOUT WHAT MICHAEL
16 ROHANA SAID, WHAT HE DID OR FAILED TO DO, HOW HE ACTED,
17 AND ALL OTHER FACTS AND CIRCUMSTANCES SHOWN BY THE
18 EVIDENCE THAT MAY PROVE WHAT WAS IN MICHAEL ROHANA'S
19 MIND AT THE TIME. IT IS ENTIRELY UP TO YOU TO DECIDE
20 WHAT THE EVIDENCE PROVES -- WHAT EVIDENCE PRESENTED
21 DURING THIS TRIAL PROVES OR FAILS TO PROVE ABOUT MICHAEL
22 ROHANA'S STATE OF MIND.

23 NOW, THAT CONCLUDES THE INSTRUCTIONS AS
24 IT RELATES TO THE LAW TO BE APPLIED IN THIS CASE. THE
25 NEXT SECTION IS HOW YOU SHOULD PROCEED DURING THE

1 DELIBERATIONS.

2 FIRST. THE FIRST THING YOU SHOULD DO IN
3 THE JURY ROOM IS CHOOSE SOMEONE TO BE YOUR FOREPERSON.
4 THIS PERSON WILL SPEAK FOR YOU, THE JURY, IN COURT. HE
5 OR SHE WILL PRESIDE OVER YOUR DISCUSSION. HOWEVER, THE
6 VIEWS AND THE VOTE OF THE FOREPERSON ARE ENTITLED TO NO
7 GREATER WEIGHT THAN THOSE OF ANY OTHER JUROR.

8 SECOND, I WANT TO REMIND YOU THAT YOUR
9 VERDICT, WHETHER IT IS GUILTY OR NOT GUILTY, MUST BE
10 UNANIMOUS. TO FIND THE DEFENDANT GUILTY OF AN OFFENSE,
11 EACH ONE OF YOU MUST AGREE THAT THE GOVERNMENT HAS
12 OVERCOME THE PRESUMPTION OF INNOCENCE WITH EVIDENCE THAT
13 PROVES EACH ELEMENT OF THAT OFFENSE BEYOND A REASONABLE
14 DOUBT. TO FIND THE DEFENDANT NOT GUILTY, EVERY ONE OF
15 YOU MUST AGREE THAT THE GOVERNMENT HAS FAILED TO
16 CONVINCE YOU BEYOND A REASONABLE DOUBT.

17 THIRD. IF YOU DECIDE THE GOVERNMENT HAS
18 PROVEN THE DEFENDANT GUILTY, THEN IT WILL BE MY
19 RESPONSIBILITY TO DECIDE WHAT THE APPROPRIATE PUNISHMENT
20 SHOULD BE. YOU SHOULD NEVER CONSIDER THE POSSIBLE
21 PUNISHMENT IN REACHING YOUR VERDICT.

22 FOURTH. AS I HAVE SAID BEFORE, YOUR
23 VERDICT MUST BE BASED ON THE EVIDENCE RECEIVED IN THIS
24 CASE AND THE LAW THAT I HAVE GIVEN TO YOU. YOU SHOULD
25 NOT TAKE ANYTHING THAT I HAVE SAID OR DONE DURING THE

1 TRIAL AS INDICATING WHAT I THINK THE EVIDENCE -- WHAT I
2 THINK OF THE EVIDENCE OR WHAT I THINK YOUR VERDICT
3 SHOULD BE. WHAT THE VERDICT SHOULD BE IS THE EXCLUSIVE
4 RESPONSIBILITY OF THE JURY.

5 FIFTH. NOW THAT ALL OF THE EVIDENCE IS
6 IN AND THE ARGUMENTS ARE COMPLETED, AND ONCE I HAVE
7 FINISHED MY INSTRUCTIONS, YOU ARE FREE TO TALK ABOUT THE
8 CASE IN THE JURY ROOM. IN FACT, IT IS YOUR DUTY TO TALK
9 WITH EACH OTHER ABOUT THE EVIDENCE AND TO MAKE ANY
10 REASONABLE EFFORT YOU CAN TO REACH UNANIMOUS AGREEMENT.
11 TALK WITH EACH OTHER. LISTEN CAREFULLY AND RESPECTFULLY
12 TO EACH OTHER'S VIEWS AND KEEP AN OPEN MIND AS YOU
13 LISTEN TO WHAT YOUR FELLOW JURORS HAVE TO SAY. DO NOT
14 HESITATE TO CHANGE YOUR MIND IF YOU ARE CONVINCED THAT
15 THE OTHER JURORS ARE RIGHT AND YOUR ORIGINAL POSITION
16 WAS WRONG. DO NOT CHANGE YOUR MIND JUST BECAUSE OTHER
17 JURORS SEE THINGS DIFFERENTLY OR JUST TO GET THE CASE
18 OVER WITH. IN THE END, YOUR VOTE MUST BE EXACTLY THAT,
19 YOUR OWN VOTE. IT IS IMPORTANT FOR YOU TO REACH
20 UNANIMOUS AGREEMENT, BUT ONLY IF YOU CAN DO SO HONESTLY
21 AND IN GOOD CONSCIENCE. LISTEN CAREFULLY TO THE OTHER
22 JURORS, WHAT THE OTHER JURORS HAVE TO SAY AND THEN
23 DECIDE FOR YOURSELF IF THE GOVERNMENT HAS PROVEN THE
24 DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

25 NO ONE WILL BE ALLOWED TO HEAR YOUR

1 DISCUSSIONS IN THE JURY ROOM AND NO RECORD WILL BE MADE
2 OF WHAT YOU SAY. YOU SHOULD ALL FEEL FREE TO SPEAK YOUR
3 MINDS.

4 REMEMBER, IF YOU ELECTED TO TAKE NOTES
5 DURING THE TRIAL, YOUR NOTES SHOULD BE USED ONLY AS
6 MEMORY AIDS. YOU SHOULD NOT GIVE YOUR NOTES GREATER
7 WEIGHT THAN YOUR INDEPENDENT RECOLLECTION OF THE
8 EVIDENCE. YOU SHOULD RELY UPON YOUR OWN INDEPENDENT
9 RECOLLECTION OF THE EVIDENCE OR LACK OF EVIDENCE, AND
10 YOU SHOULD NOT BE UNDULY INFLUENCED BY THE NOTES OF
11 OTHER JURORS. NOTES ARE NOT ENTITLED TO ANY MORE WEIGHT
12 THAN THE MEMORY OR IMPRESSION OF EACH JUROR.

13 SIXTH. ONCE YOU START DELIBERATING, DO
14 NOT TALK, COMMUNICATE WITH OR PROVIDE ANY INFORMATION
15 ABOUT THIS CASE BY ANY MEANS THROUGH THE COURT OFFICIALS
16 OR TO ME OR ANYONE ELSE EXCEPT EACH OTHER. DURING YOUR
17 DELIBERATIONS YOU SHOULD NOT USE AN ELECTRONIC DEVICE OR
18 MEDIA, SUCH AS TELEPHONE, CELL PHONE, SMART PHONE,
19 IPHONE, BLACKBERRY OR COMPUTERS, THE INTERNET OR ANY
20 INTERNET SERVICE, OR ANY TEXT OR INSTANT MESSAGING
21 SERVICES, OR ANY INTERNET CHATROOMS, BLOGS OR WEBSITES.

22 SEVENTH. IF YOU HAVE ANY QUESTIONS OR
23 ANY MESSAGES, YOUR FOREPERSON SHOULD WRITE THEM DOWN ON
24 A PIECE OF PAPER, SIGN THEM, AND GIVE THEM TO THE COURT
25 OFFICIAL WHO WILL GIVE THEM TO ME. I WILL FIRST TALK TO

1 THE LAWYERS ABOUT WHAT YOU HAVE ASKED, AND I WILL
2 RESPOND AS SOON AS I CAN. IN THE MEANTIME IF POSSIBLE
3 CONTINUE WITH YOUR DELIBERATIONS ON SOME OTHER SUBJECT.

4 IF YOU WANT TO SEE ANY EXHIBITS THAT ARE
5 ADMITTED INTO EVIDENCE, YOU SHOULD SEND ME A MESSAGE,
6 AND IF I CAN LEGALLY DO SO, I WILL HAVE THE EXHIBITS
7 PROVIDED TO YOU.

8 ONE MORE THING. DO NOT WRITE DOWN OR
9 TELL ANYONE ABOUT YOU OR HOW ANY ONE ELSE VOTED. THAT
10 SHOULD STAY SECRET UNTIL YOU HAVE FINISHED YOUR
11 DELIBERATIONS. IF YOU HAVE OCCASION TO COMMUNICATE WITH
12 THE COURT WHILE DELIBERATING, DO NOT DISCLOSE THE NUMBER
13 OF JURORS WHO HAVE VOTED TO CONVICT OR ACQUIT ON ANY
14 OFFENSE.

15 YOU WILL RECEIVE A VERDICT FORM THAT
16 SHOULD BE USED TO RECORD YOUR VERDICTS. TAKE THIS FORM
17 TO THE JURY ROOM. WHEN YOU HAVE REACHED YOUR UNANIMOUS
18 VERDICT, THE FOREPERSON SHOULD WRITE THE VERDICT ON THE
19 FORM AND DATE IT, SIGN IT, AND RETURN TO THE COURTROOM
20 AND GIVE THE FORM TO MY COURTROOM DEPUTY TO GIVE TO ME.
21 IF YOU DECIDE THE GOVERNMENT HAS PROVEN THE DEFENDANT
22 GUILTY OF ANY OR ALL OF THE OFFENSES CHARGED BEYOND A
23 REASONABLE DOUBT, SAY SO BY HAVING YOUR FOREPERSON MARK
24 THE APPROPRIATE PLACE ON THE FORM. IF YOU DECIDE THE
25 GOVERNMENT HAS NOT PROVED THE DEFENDANT GUILTY OF SOME

1 OR ALL OF THE OFFENSES CHARGED BEYOND A REASONABLE
2 DOUBT, SAY SO BY HAVING YOUR FOREPERSON MARK THE
3 APPROPRIATE PLACE ON THE FORM.

4 WITH THAT, LADIES AND GENTLEMEN, I WILL
5 SEND YOU TO THE JURY ROOM TO BEGIN YOUR DELIBERATIONS.

6 MS. MACEOIN: YOUR HONOR, MAY WE SEE YOU
7 AT SIDEBAR BRIEFLY?

8 THE COURT: SURE.

9 (SIDEBAR DISCUSSION.)

10 MS. MACEOIN: YOUR HONOR, WE JUST RENEW
11 OUR OBJECTIONS THAT WE STATED DURING THE CHARGING
12 CONFERENCE. THEY HAVE TO BE RENEWED AT THE END OF THE
13 INSTRUCTIONS.

14 THE COURT: YES. WHICH ONES?

15 MS. MACEOIN: WE OBJECTED TO THE
16 DEFINITION OF WORTH BEING PROVIDED BY THE COURT.

17 MS. HENRY: AND TO THE IDEA THAT THE
18 INTENT TO STEAL IS NOT NECESSARY FOR COUNT TWO.

19 MS. MACEOIN: CORRECT, AND INTENT TO
20 STEAL AS WELL.

21 THE COURT: OKAY.

22 MS. HENRY: ONE OTHER THING. I THINK YOU
23 MISSPOKE.

24 MS. MACEOIN: INADVERTENTLY.

25 MS. HENRY: INADVERTENTLY ON PAGE 23 WHEN

1 YOU WERE TALKING ABOUT THE PRESUMPTION OR OBLIGATION,
2 THE GOVERNMENT HAS TO PROVE THE DEFENDANT IS GUILTY AND
3 THIS BURDEN STAYS WITH THE DEFENDANT, YOU WROTE. YOU
4 SAID DEFENDANT INSTEAD OF GOVERNMENT THROUGHOUT THE
5 TRIAL. THAT WAS THE ONLY -- DID ANYONE ELSE NOTICE
6 THAT?

7 THE DEPUTY CLERK: I DID.

8 THE COURT: PAGE 23.

9 MS. HENRY: PAGE 23. IT WAS JUST THE
10 MIDDLE PARAGRAPH, THE SECOND PARAGRAPH.

11 THE DEPUTY CLERK: THE LAST SENTENCE.

12 MS. HENRY: THANK YOU.

13 (SIDEBAR ENDS.)

14 THE COURT: IT WAS BROUGHT TO MY
15 ATTENTION THAT I MAY HAVE MISSPOKEN SO THAT I AM GOING
16 TO REPEAT ONE OF THE PARAGRAPHS AS IT RELATES TO
17 PRESUMPTION.

18 THE PRESUMPTION OF INNOCENCE MEANS THAT
19 THE DEFENDANT HAS NO BURDEN OR OBLIGATION TO PRESENT ANY
20 EVIDENCE AT ALL OR TO PROVE THAT HE IS NOT GUILTY. THE
21 BURDEN OR OBLIGATION OF PROOF IS ON THE GOVERNMENT TO
22 PROVE THAT THE DEFENDANT IS GUILTY, AND THAT BURDEN
23 STAYS WITH THE GOVERNMENT THROUGHOUT THE TRIAL.

24 IS THAT SATISFACTORY?

25 MS. HENRY: YES, YOUR HONOR.

1 MS. MACEOIN: YES.

2 MS. NEWTON: YES, IT IS YOUR HONOR.

3 THE COURT: SO WE WILL EXCUSE YOU TO GO
4 THE JURY ROOM TO BEGIN YOUR DELIBERATIONS. WE WILL GIVE
5 YOU A COPY OF THE INSTRUCTIONS, AT LEAST ONE COPY OF THE
6 INSTRUCTIONS, SO THAT YOU CAN REFER TO THEM DURING YOUR
7 DELIBERATIONS. AND IF YOU WISH TO SEE ANY OF THE
8 EXHIBITS, JUST LET US KNOW. OKAY?

9 THE CLERK: ALL RISE.

10 (JURY OUT.)

11 THE COURT: OKAY. YOU MAY BE SEATED. I
12 THINK WE SHOULD JUST STICK AROUND FOR A FEW MINUTES SO
13 WE CAN DETERMINE IF THEY WANT ANY OF THE EXHIBITS.

14 (BRIEF PAUSE IN THE PROCEEDING.)

15 (QUESTION IS BACK IN CHAMBERS.)

16 THE COURT: DID YOU EACH HAVE AN
17 OPPORTUNITY TO REVIEW WHAT THEY ARE REQUESTING?

18 MS. HENRY: YES.

19 MS. NEWTON: YES.

20 THE COURT: WE HAVE A SMART JURY.

21 MS. NEWTON: YES, WE DO.

22 YOUR HONOR, IT IS MY UNDERSTANDING THAT
23 THE DEFENSE IS OBJECTING TO MR. COHN'S TESTIMONY BEING
24 PROVIDED TO THEM, AND THE GOVERNMENT BELIEVES IT'S
25 IMPORTANT THAT THAT TESTIMONY GO BACK. AND THE REASON

1 IS, I HAVE TO SAY IN MY YEARS OF FEDERAL PRACTICE I HAVE
2 NEVER HEARD OF THE EXERT REPORT BEING ADMITTED AS
3 SUBJECTIVE EVIDENCE, WHICH IS THE REASON THE GOVERNMENT
4 DID NOT MOVE TO ADMIT MR. COHN'S REPORT. AND AS I SAID,
5 I WAS VERY SURPRISED AND SOMEWHAT BLINDSIDED WHEN THE
6 DEFENSE DID MOVE IT IN.

7 SO GIVEN THE FACT THAT THE DEFENSE
8 EXPERTS HAVE BEEN PUT INTO EVIDENCE, THE GOVERNMENT
9 BELIEVES THAT IT IS APPROPRIATE AND IMPORTANT THAT THE
10 JURY BE ABLE TO LOOK AT MR. COHN'S TESTIMONY.

11 MS. MACEOIN: YOUR HONOR, OUR OBJECTION
12 IS JUST THAT IT'S THEIR RECOLLECTION THAT SHOULD
13 CONTROL. IT WASN'T A LONG TRIAL, IT WASN'T SOMETHING
14 THAT HAPPENED TWO WEEKS AGO. SO THAT WOULD BE OUR
15 POSITION.

16 THE COURT: WE HAVE IT, DON'T WE?

17 MS. NEWTON: WE DO HAVE IT.

18 THE COURT: USUALLY WE DON'T HAVE IT.
19 THAT'S WHY I USUALLY TELL THEM THEY HAVE TO GO ON THEIR
20 OWN RECOLLECTION.

21 MS. NEWTON: RIGHT.

22 THE COURT: I GUESS THE COMPROMISE WOULD
23 BE TO TELL THEM TO RELY ON THEIR OWN RECOLLECTION. IF
24 THERE IS A PARTICULAR ISSUE THAT THEY HAVE, THEN WE WILL
25 ADDRESS IT AGAIN.

1 MS. NEWTON: YOUR HONOR, I UNDERSTAND. I
2 THINK THEY ARE ALREADY RAISING THAT ISSUE AND THEY HAVE
3 NOW --

4 THE COURT: I GUESS THEY ARE.

5 MS. HENRY: THE ONLY PROBLEM IS THAT -- I
6 MEAN, I KNOW THEY HAVE OUR EXPERT REPORTS, BUT THEY
7 DON'T HAVE THE DEFENSE EXPERT TESTIMONY. SO TO SEND
8 BACK JUST ONE SET OF TESTIMONY WITHOUT SENDING BACK OUR
9 EXPERT'S TESTIMONY --

10 MS. MACEOIN: THAT WAS MY NEXT POINT.

11 MS. NEWTON: I WOULD NOT HAVE ANY
12 OBJECTION TO THAT, YOUR HONOR, IF THEY WANT TO SEND BACK
13 THE TESTIMONY OF THE THREE EXPERTS.

14 THE COURT: OKAY. SINCE WE HAVE IT, I'M
15 GOING TO LET THEM HAVE A TRANSCRIPT OF MR. COHN'S
16 TESTIMONY.

17 MS. MACEOIN: YOUR HONOR, WE WOULD JUST
18 ASK THAT OUR EXPERT'S TESTIMONY BE ADMITTED AS WELL OR
19 BE PROVIDED TO THE JURY.

20 THE COURT: OKAY.

21 MS. MACEOIN: THANK YOU.

22 THE COURT: LET ME JUST PUT HERE WHAT WE
23 DID.

24 MS. HENRY: THANK YOU.

25 THE COURT: OKAY.

1 (JURY CONTINUES TO DELIBERATE.)

2 (JURY QUESTION BACK IN CHAMBERS)

3 THE COURT: WELL, HERE IT COMES.

4 ACCORDING TO LAW, CAN YOU EXPAND ON THE DEFINITION OF
5 WORTH?

6 MS. HENRY: YOUR HONOR, OUR POSITION IS
7 THAT THE ANSWER TO THAT IS NO. YOU WERE PROVIDED THE
8 DEFINITION OF WORTH IN THE INSTRUCTIONS. IN FACT, THE
9 GOVERNMENT SPECIFICALLY ASKED THAT "WORTH" BE DEFINED.
10 WE AGREED, FINALLY, AND YOUR HONOR RULED ON WHAT THE
11 DEFINITION OF WORTH WOULD BE, SO NOW THE JURY CAN ONLY
12 CONSIDER THE DEFINITION OF WORTH THAT WAS PROVIDED TO
13 THEM IN THE JURY INSTRUCTIONS.

14 MS. NEWTON: I DON'T KNOW THAT THAT'S
15 CORRECT, YOUR HONOR. I THINK YOU CAN CERTAINLY PROVIDE
16 A DEFINITION, BUT THE JURORS ARE ALWAYS PERMITTED TO USE
17 THEIR COMMON SENSE IN THE ORDINARY DEFINITION OF A WORD.

18 MS. MACEOIN: THEY HAVE ASKED
19 SPECIFICALLY TO EXPAND THE DEFINITION.

20 MS. HENRY: AND YOU CANNOT EXPAND IT PAST
21 THE --

22 THE COURT: I CANNOT.

23 MS. NEWTON: YOU CANNOT EXPAND.

24 THE COURT: I CANNOT, THAT IS CLEAR.

25 MS. NEWTON: SO CERTAINLY SAYING YOU MAY

1 USE THE LEGAL DEFINITION PROVIDED AND YOUR UNDERSTANDING
2 OF THE DEFINITION OF WORTH. I THINK THAT IS ABSOLUTELY
3 PERMISSIBLE.

4 MS. HENRY: THAT COULD BE AN EXPANSION
5 WHICH IS WHY WE SPECIFICALLY FOUGHT ABOUT THIS, AND WE
6 AGREED THAT THIS WOULD BE THE DEFINITION, AND THAT THEY
7 SHOULD CONSIDER THE DEFINITION. I THINK YOU SHOULD JUST
8 SAY, YOU CANNOT EXPAND THE DEFINITION OF WORTH. PLEASE
9 REFER TO THE DEFINITION OF WORTH IN THE JURY
10 INSTRUCTIONS THAT YOU HAVE BEEN PROVIDED.

11 MS. NEWTON: YOUR HONOR, I DON'T THINK
12 THAT IS CORRECT. I THINK YOU CAN PROVIDE A LEGAL
13 DEFINITION, BUT IN THEIR OWN EXPERIENCE, THEY CAN USE
14 THEIR EXPERIENCE AS TO WHAT "WORTH" MEANS.

15 MS. HENRY: BUT THEY HAVE TO BE TOLD THEY
16 CANNOT EXPAND IT, BECAUSE THAT'S TRUE.

17 THE COURT: I CANNOT EXPAND IT.

18 MS. HENRY: THAT YOU CANNOT EXPAND IT,
19 RIGHT.

20 THE COURT: I CANNOT EXPAND ON THE
21 DEFINITION, THE INSTRUCTIONS DEFINE WORTH. OTHERWISE,
22 YOU MUST RELY UPON THE COMMON DEFINITION.

23 MS. HENRY: THAT IS INCONSISTENT THERE,
24 BECAUSE THEY ARE GOING TO SAY, WELL, WHAT IS IT? IS IT
25 THE DEFINITION OR IS IT THE COMMON DEFINITION? THEY

1 SHOULD ONLY HAVE ONE DEFINITION.

2 MS. NEWTON: THAT'S WHAT I DON'T THINK IS
3 CORRECT, YOUR HONOR. I THINK THEY ARE PERMITTED TO LOOK
4 AT WHAT A COMMON DEFINITION FOR ANY WORD THAT THEY USE,
5 WHETHER IT'S A LEGAL DEFINITION AS WELL.

6 MS. MACEOIN: YOUR HONOR, I AM TRYING TO
7 THINK OF AN EXAMPLE WHERE SOMETHING IS VERY SPECIFIC IN
8 THE LAW AND IT HAS A DIFFERENT DEFINITION IN COMMON
9 SENSE.

10 MS. HENRY: INTERSTATE COMMERCE IS A
11 PERFECT EXAMPLE. IT HAS A MEANING, LEGAL DEFINITION.
12 BUT IF YOU GAVE THE NORMAL DEFINITION OF COMMERCE OR
13 WHAT THEY THINK INTER AND WHAT THEY THINK STATE MEANS,
14 IT DOES NOT MEET THE DEFINITION OF WHAT INTERSTATE IS.

15 I HAD THIS EXACT ISSUE BEFORE JUDGE
16 BAYLSON. AND THE QUESTION WAS THEY WANTED A REGULAR
17 DEFINITION OUTSIDE OF THE LEGAL DEFINITION, SO THE JUDGE
18 -- THEY ASKED FOR A DICTIONARY SO THAT THEY COULD LOOK
19 AND SEE WHAT THE ORDINARY DEFINITION OF INTERSTATE
20 COMMERCE WAS AND THAT WAS -- A NEW TRIAL WAS GRANTED
21 BECAUSE THEY WERE NOT ALLOWED TO GO OUTSIDE THE
22 DEFINITION OF WHAT WAS IN THE JURY INSTRUCTIONS.

23 AND IN THIS CASE, WE DIDN'T WANT ANY
24 DEFINITION AT ALL, BUT THEN THE GOVERNMENT FOUGHT AND
25 THEY WANTED THIS SPECIFIC WORD DEFINED. AND NOW FOR

1 THEM TO SAY THAT, OH, IT'S OKAY TO GO SOMEWHERE OUTSIDE
2 OF THAT DEFINITION, THAT'S WHAT THEY FOUGHT FOR.

3 SO I THINK IF WE GIVE AN INSTRUCTION
4 SAYING, I CANNOT EXPAND IT AND YOU HAVE THE INSTRUCTION
5 IN FRONT OF YOU, THAT SHOULD BE IT. IT SHOULD NOT BE
6 THAT YOU CAN USE YOUR COMMON SENSE OR GO OUTSIDE OR
7 ANYTHING ELSE. THEY HAVE A DEFINITION AND WE LITIGATED
8 IT -- WE FILED -- WE DID TONS OF LITIGATION ON THIS
9 DEFINITION. WE DID MOTIONS IN LIMINE, WE FILED WRITTEN
10 MOTIONS BECAUSE OF THIS VERY ISSUE.

11 AND SO NOW TO SAY THAT ALL OF THAT, THAT
12 THEY CAN JUST SORT OF -- BY SAYING YOU CAN USE YOUR
13 REGULAR DEFINITION OR COMMON DEFINITION, YOU ARE
14 ESSENTIALLY SAYING THAT THEY ARE NOT BOUND BY THE
15 DEFINITION THAT IS IN THE INSTRUCTIONS.

16 MS. NEWTON: YOUR HONOR, I THINK I AGREE
17 THAT A DICTIONARY DEFINITION SHOULD NOT BE PROVIDED, BUT
18 I THINK WHAT IS APPROPRIATE IS THAT THEY HAVE A LEGAL
19 DEFINITION AND THEY MAY USE THEIR COMMON SENSE IN
20 DEFINING THE TERM.

21 MS. MACEOIN: I BELIEVE, YOUR HONOR, THE
22 REFERENCE TO COMMON SENSE IN THE JURY INSTRUCTIONS IS
23 THAT THE JURY DOESN'T LEAVE THEIR COMMON SENSE AT THE
24 DOOR WHEN DETERMINING FACTS IN A CASE. BUT SOMETHING
25 LIKE A LEGAL DEFINITION AND, LIKE, ENCOURAGING THEM TO

1 USE THEIR OWN KIND OF LAYMAN'S DEFINITION OF WORTH, I
2 THINK IT'S REVERSIBLE ERROR, RESPECTFULLY. IT'S BECAUSE
3 THIS IS -- I MEAN, ESPECIALLY IN THIS CASE WITH THIS
4 ISSUE, IT'S SUCH A SPECIFIC -- AGAIN, WE MAINTAIN THAT
5 IT'S DEFINED SOLELY BY MONETARY. THE GOVERNMENT
6 OBJECTED, YOUR HONOR RULED. TO GO BEYOND THAT I THINK
7 IT IS OPENING THE DOOR THAT COULD CAUSE REVERSAL ERROR.

8 THE COURT: OKAY. THE NEXT QUESTION IS,
9 DEFINE WHAT I MEANT BY PROBATIVE.

10 MS. HENRY: YOUR HONOR, SO OUR SUGGESTION
11 IS --

12 THE COURT: I DIDN'T WANT TO USE RELEVANT
13 BECAUSE IT COULD BE RELEVANT.

14 MS. HENRY: RIGHT. OUR OBJECTION WAS
15 THAT -- AND WHAT I WOULD SUGGEST THAT THE COURT DO AT
16 THIS POINT BEFORE WE START GOING DOWN THE RABBIT HOLE
17 TRYING TO DEFINE THINGS THAT ARE LEGAL TERMS TO THE JURY
18 WOULD BE TO SAY -- FOR YOUR HONOR TO SAY, MY CORRECT
19 RESPONSE TO YOUR FIRST QUESTION SHOULD HAVE BEEN --
20 RESPECTFULLY. NO OFFENSE, JUDGE. I SAY THIS OUT OF THE
21 UTMOST RESPECT. THAT THE COURT CANNOT ANSWER WHY THE
22 GOVERNMENT DID NOT ENTER MR. KOHN'S REPORTS INTO
23 EVIDENCE. THERE IS NO WAY THAT YOU CAN KNOW WHAT WAS IN
24 THE PROSECUTOR'S MIND AND TO SAY THAT THE JURY -- THAT
25 WHAT THEY DID WAS -- TO TELL THE JURY WHAT WAS MEANT BY

1 THEIR TACTICAL DECISION. I MEAN, OF COURSE, YOU DON'T
2 KNOW WHY THEY DID WHAT THEY DID. SO FOR THE JURY -- THE
3 JURY IS ASKING YOU, YOU KNOW, WHY DID THEY DO THAT? AND
4 I THINK YOUR HONOR'S ANSWER SHOULD BE, THE COURT CAN'T
5 ANSWER OR COMMENT ON WHY THE GOVERNMENT DID NOT ENTER
6 THESE REPORTS INTO EVIDENCE BECAUSE THAT'S NOT
7 APPROPRIATE FOR THE COURT TO DO.

8 MS. NEWTON: YOUR HONOR, WE ARE GETTING
9 INTO A VERY STICKY ISSUE HERE, BECAUSE THE REALITY IS
10 THE EXPERT REPORTS ARE NOT ADMITTED INTO EVIDENCE
11 BECAUSE THEY ARE HEARSAY, THAT'S WHY THE EXPERT
12 TESTIFIES. AND THE COURT DID RULE THAT DEFENSE EXPERT
13 REPORTS WERE ADMITTED INTO EVIDENCE. AND I HAVE TO
14 ADMIT I WAS -- AS I SAID BEFORE, I WAS SO SURPRISED I
15 DIDN'T OBJECT AT THE TIME. BUT I THINK WE NEED TO BE
16 VERY CAREFUL ABOUT WHAT IS SAID HERE. AND I DON'T THINK
17 IT'S APPROPRIATE TO REFER TO WHY TACTICAL DECISIONS WERE
18 MADE.

19 MS. HENRY: RIGHT.

20 MS. MACEOIN: WHICH IS WHY WE AGREED THAT
21 THE PREVIOUS RESPONSE SHOULD HAVE BEEN -- -

22 MS. HENRY: OR THE COURT CAN'T COMMENT ON
23 THIS, OR THE COURT CANNOT ANSWER THIS QUESTION.

24 MS. MACEOIN: I HAVE HAD JUDGES SAY THAT
25 WHEN A QUESTION PROBES BEYOND WHAT THE COURT CAN ANSWER.

1 THE COURT: WELL, AT LEAST AS FAR AS
2 NUMBER SIX, I AM GOING TO SAY I CANNOT FURTHER EXPAND ON
3 THE DEFINITION. THE INSTRUCTIONS DEFINE WORTH.

4 PLEASE FURTHER DEFINE WHAT PROBATIVE IS.
5 WELL, WHAT I WAS TRYING TO SAY WAS IT HAS NOTHING TO DO
6 WITH THE ELEMENTS IN THIS CASE OR THE ELEMENTS OF THE
7 OFFENSES, SOMETHING LIKE THAT.

8 MS. NEWTON: PROBATIVE HAS TO DO WITH
9 PROOF. WHAT IS THE PROOF?

10 THE COURT: RIGHT.

11 MS. HENRY: SO IF YOU WERE GOING TO
12 SAY --

13 THE COURT: IT DOESN'T GO TO PROVE ANY OF
14 THE ELEMENTS OF THE OFFENSE.

15 MS. MACEOIN: BUT IT IS PART OF THE
16 JURY'S OVERALL CONSIDERATION WHEN SOMETHING IS NOT IN
17 EVIDENCE.

18 MS. HENRY: RIGHT, BECAUSE THEY CAN LOOK
19 AT LACK OF EVIDENCE.

20 MS. MACEOIN: TO DETERMINE REASONABLE
21 DOUBT, RIGHT?

22 MS. HENRY: RIGHT. SO --

23 MS. MACEOIN: I THINK, YOUR HONOR, I AM
24 AT A LOSS AS TO WHAT WE CAN SAY NOW WITHOUT FURTHER
25 GOING DOWN A RABBIT HOLE AND DEFINING IT AND DEFINING IT

1 AND DEFINING IT.

2 MS. HENRY: I MEAN, OTHER THAN SAYING
3 THAT WE CAN'T -- BECAUSE THEY CAN SPECULATE ABOUT -- OR
4 THEY CAN --

5 MS. MACEOIN: I MEAN, ONE CHOICE IS TO
6 SAY, WE ARE NOT GOING TO COMMENT FURTHER ON THIS
7 PARTICULAR QUESTION. THE COURT IS NOT GOING TO COMMENT
8 FURTHER ON THIS QUESTION.

9 MS. HENRY: BUT THEN YOU FEEL LIKE --

10 MS. MACEOIN: THEN YOU FEEL LIKE YOU ARE
11 NOT ANSWERING THEIR QUESTION. I KNOW.

12 MS. HENRY: OR THE GOVERNMENT -- IF YOUR
13 HONOR IS GOING TO SAY IT DOESN'T GO TO ONE OF THESE
14 ELEMENTS, MAYBE WE WOULD WANT TO REINSTRUCT THAT THE
15 GOVERNMENT HAS THE BURDEN OF PROOF AS TO ALL ELEMENTS.

16 MS. MACEOIN: RIGHT, WE MAY WANT TO.

17 THE COURT: PROBATIVE MEANS PROOF. THE
18 GOVERNMENT HAS THE BURDEN OF PROOF ON EACH OF THE
19 ELEMENTS OF THE OFFENSES.

20 MS. HENRY: FINE.

21 MS. MACEOIN: THANK YOU, YOUR HONOR.

22 MS. HENRY: THANK YOU, YOUR HONOR.

23 (END IN CHAMBERS.)

24 (JURY CONTINUES TO DELIBERATE.)

25 THE COURT: I AM JUST GOING TO BRING THE

1 JURY IN AND EXCUSE THEM.

2 (JURY IN.)

3 THE COURT: OKAY, YOU MAY BE SEATED.

4 LADIES AND GENTLEMEN, IT IS ALMOST 4:30.

5 YOU HAVE BEEN DELIBERATING ALL DAY. I THINK THAT IT IS
6 APPROPRIATE AT THIS TIME TO EXCUSE YOU AND BRING YOU
7 BACK TOMORROW. I KNOW IT SEEMS LIKE YOU'VE BEEN
8 DELIBERATING FOR A LONG TIME, BUT YOU REALLY HAVEN'T.
9 SO I'M GOING TO EXCUSE YOU, TELL YOU TO CEASE YOUR
10 DELIBERATIONS, DON'T DISCUSS THIS WITH ANYONE.

11 ENJOY YOUR EVENING AND WE WILL SEE YOU
12 BACK HERE TOMORROW MORNING AT 9:30.

13 (JURY OUT.)

14 THE COURT: OKAY, WE ARE RECESSED UNTIL
15 TOMORROW MORNING AT 9:30.

16 ALL COUNSEL: THANK YOU, YOUR HONOR.

17 (COURT ADJOURNED.)

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I CERTIFY THAT THE FOREGOING IS A CORRECT

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TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE

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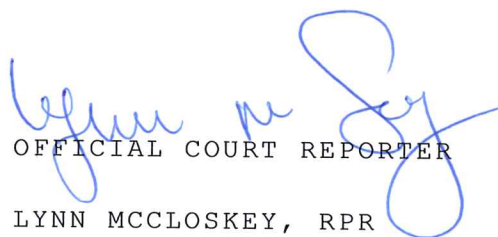
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OFFICIAL COURT REPORTER

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